IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

M/s Arjun Singh Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.2334/2005

Date of order : 13th April 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.S.D.Vyas for the petitioner
Mr.R.Dave, Dy.G.A.
Mr.P.P.Choudhary for the intervenor

BY THE COURT:

The petitioner, a fair price shopkeeper authorised under the Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976 ('the Order of 1976') at village Senai, Tehsil Luni, District Jodhpur has submitted this writ petition assailing the notice dated 18.03.2005 (Annex.1) informing him of the irregularities found during inspection and calling upon his explanation on 11.04.2005. The petitioner

has also challenged the order passed by the District Supply Officer, Jodhpur ('DSO')on 12.05.2005 (Annex.2) that reads in its entirety thus,-

> "मैसर्स श्री अर्जुनसिंह उचित मूल्य विक्रेता ग्राम सेनाई के विरूद्ध ग्रामवासियां की शिकायत प्राप्त होने पर इस कार्यालय के प्रवर्तन अधिकारी एवम् प्रवर्तन निरीक्षक से जांच करवायी गयी। प्रवर्तन अधिकारी ने दिनांक 12.03.2005 को मौके पर जांच कर अपनी रिपोर्ट प्रस्तुत करके अवगत कराया है कि उचित मूल्य विक्रेता द्वारा बी.पी.एल. कार्ड धारियों को गेहूं नहीं दिये गये है तथा केरोसीन तेल के वितरण का रजिस्टर में फर्जी इन्द्राज किया गया है । इस प्रकार उचित मूल्य विक्रेता द्वारा गम्भीर अनियमितता की जाकर राजस्थान खाद्यान एवं अन्य आवश्यक पदार्थ (वितरण का विनियमन) आदेश 1976 के तहत जारी प्राधिकार पत्र की शर्तों का स्पष्ट उल्लघंन किया गया है ।
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> मैसर्स श्री अर्जुनसिंह उचित मूल्य विक्रेता ग्राम सेनाई द्वारा गम्भीर अनियमितताएं बरतने के परिणाम स्वरूप राजस्थान खाद्यान एवं आवश्यक पदार्थ (वितरण का विनियमन) आदेश 1976 के तहत प्रदत्त शक्तियों का प्रयोग करते हुये डीलर को जारी प्राधिकार पत्र 90 दिवस के लिए तुरन्त प्रभाव से निलम्बित किया जाता है। उक्त ग्राम के उपभोक्ताओं को राशन सामग्री की वैकल्पिक वितरण व्यवस्था करने हेतु मैसर्स सुखाराम, मोतीराम उचित मूल्य विक्रेता सिनली को अस्थाई रूप से अधिकृत किया जाता है जो ग्राम सेनाई में जाकर सामग्री का वितरण करेगा।"

The petitioner has contended in the writ petition that the order Annex.2 has been passed without application of mind and without affording adequate opportunity of hearing to him; and that the order impugned has been issued in contravention of the requirements of Clause-8 of the Order of 1976. The notice Annex.1 has also been challenged being baseless and without application of mind.

This writ petition was admitted on 28.04.2005 and by way of interim order, further proceedings in pursuance of the notice dated 18.03.2005 (Annex.1) and so also operation of the order dated 12.04.2005 (Annex.2) were ordered to remain stayed.

In reply to this writ petition , it has been asserted by the respondents that villagers of the area alongwith Sarpanch made a complaint in writing in regard to the irregularities being committed by the petitioner in managing the fair price shop; that inspection was carried out and statements of villagers were recorded and thereafter notice dated 18.03.2005 was served on the petitioner; that on the date fixed counsel appeared for the petitioner and submitted an application without "Vakalatnama" and without any relevant

document. It has also been stated that on 12.04.2005 the petitioner presented himself alongwith reply before the DSO and the reply carried the date of 11.04.2005 although the petitioner produced an illness certificate for the period 10.04.2005 to 12.04.2005. It has been maintained that the only intention of the petitioner has been to avoid the proceedings and no illegality has been committed in passng the order dated 12.04.2005 (Annex.2). It has also been stated in the reply that after cancellation of the licence of the petitioner, licence to other eligible person has been issued by the answering respondents. However, learned Dy. Government Advocate during the course of submissions has clarified the fact that such averments were intended to be made only in relation to the suspension of the licence of the petitioner and no order of cancellation had been issued.

Having heard learned counsel for the parties and having perused the material placed on record and the effect and consequences of the proceedings hitherto taken in this matter, this Court finds that the learned DSO has purported to issue an order for suspension of licence of the petitioner for 90 days from 12.04.2005. It is apparent that while passing the aforesaid order dated 12.04.2005, the respondent cannot

be said to have afforded an adequate opportunity of hearing to the petitioner inasmuch as according to the own showings of the respondents the petitioner did appear on 12.04.2005 and submitted a reply but consideration of such reply is not spelt out in the impugned order dated 12.04.2005. Moreover, while issuing notice dated 18.03.2005 (Annex.1) learned DSO had stated that the firm was inspected on "14.7.2005". Obviously, the date of inspection is not stated correctly. The petitioner having been supplied with copy of enquiry report or the material sought to be used against him in the nature of so-called statements recorded by the enforcement officer has also not been shown. Moreover, the order dated 12.04.2005 nowhere speaks about any proceedings for cancellation being pending or under contemplation against the petitioner. In such a fact situation, this Court has admitted the petition on 28.04.2005 staying the proceedings in pursuance of the order Annex.1 and so also the operation of the order Annex.2.

Without going into and pronouncing upon any other aspect of the matter, suffice is to notice that so far suspension order dated 12.04.2005 (Annex.2) is concerned, it had already lost its effect and efficacy inasmuch as the said order was intended to suspend the licence of the petitioner for

a period of 90 days from the date of the order and such period has already passed by long back.

The operation of the order dated 12.04.2005 (Annex.2) was stayed by this Court on 28.04.2005 and having regard to overall circumstances of the case and the period of intended operation of the said order, this Court is of opinion that no useful purpose would be served by continuing with this writ petition any further, and on the contrary, ends of justice could be secured by setting aside the redundant order dated 12.04.2005 (Annex.2) and at the same time permitting the respondents to take proceedings against the petitioner strictly in accordance with law, if any proceedings be under contemplation against the petitioner.

In the aforesaid view of the matter, this Court refrains from expressing any opinion on the merits of the case in relation to the action, if any, proposed to be taken by the respondents against the petitioner. However, this Court is of opinion that the proceedings if at all sought to be adopted by the respondents, they should be adopted strictly in accordance with law and the petitioner be afforded an

adequate opportunity of hearing before passing any order in the matter.

As a result, the impugned order dated 12.04.2005 (Annex.2) is quashed and this writ petition is allowed to the extent indicated above. There shall be no order as to costs of this writ petition.

(DINESH MAHESHWARI),J.

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